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INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

Dated as of May 1, 1970

among

✓ **GENERAL MOTORS CORPORATION**
(Electro-Motive Division),

✓ **VINEYARD CAR CORPORATION**

and

✓ **THE KANSAS CITY SOUTHERN RAILWAY
COMPANY**

Covering sale and purchase of 6 Locomotives

CONDITIONAL SALE AGREEMENT dated as of May 1, 1970, among the corporation named in Item 1 of Annex A hereto (hereinafter called the Vendor or Manufacturer as more particularly set forth in Article 27 hereof), VINEYARD CAR CORPORATION, a New York corporation (hereinafter called the Company), and THE KANSAS CITY SOUTHERN RAILWAY COMPANY, a Missouri corporation (hereinafter called the Guarantor or the Lessee).

WHEREAS, the Manufacturer agrees to construct, sell and deliver to the Company, and the Company agrees to purchase, the railroad equipment described in Annex B hereto (hereinafter called the Equipment);

WHEREAS, the Company is executing a lease of the Equipment as of the date hereof to the Lessee in substantially the form annexed hereto as Annex C (hereinafter called the Lease) and the Guarantor is willing to guarantee to the Vendor the due and punctual payment of all sums payable by, and the due and punctual performance of all other obligations of, the Company under this Agreement and has joined in this Agreement for the purpose of setting forth the terms and conditions of such guaranty and making certain further agreements as hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. *Construction and Sale.* Pursuant to this Agreement, the Manufacturer will construct the Equipment at its plant set forth in Annex B hereto and will sell f.o.b. point of origin and deliver the Equipment to the Company and the Company will purchase from the Manufacturer and

accept delivery of and pay for (as hereinafter provided) the Equipment, each unit of which will be a new standard-gauge unit of railroad equipment constructed in accordance with the specifications referred to in Annex B hereto and in accordance with such modifications thereof as may have been agreed upon in writing by the Manufacturer, the Company and the Guarantor (which specifications and modifications, if any, are hereinafter called the Specifications). The design, quality and component parts of the Equipment will conform to all Department of Transportation and Interstate Commerce Commission requirements and specifications reasonably interpreted as being applicable to railroad equipment of the character of the Equipment as of the date of this Agreement.

ARTICLE 2. *Delivery.* The Manufacturer will deliver the various units of the Equipment to the Company, at the point specified in, and in accordance with, the delivery schedule set forth in Annex B hereto; *provided, however*, that no delivery of any unit of the Equipment shall be made until this Agreement and the Lease have been filed pursuant to Section 20c of the Interstate Commerce Act.

The Manufacturer's obligation as to time of delivery is subject, however, to delays resulting from causes beyond the Manufacturer's reasonable control, including, but not limited to, acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, or delays in receiving necessary materials.

Notwithstanding the preceding provisions of this Article 2, any Equipment not delivered, accepted and settled for pursuant to Article 3 hereof on or before December 15, 1970 (unless such date is extended by the Company, the Guarantor

tor and the Vendor by appropriate written agreement), shall be excluded from this Agreement and not included in the term "Equipment" as used in this Agreement. In the event of any such exclusion (a) the Vendor, the Company and the Guarantor shall execute an agreement supplemental hereto limiting this Agreement to the Equipment theretofore delivered, accepted and settled for hereunder and (b) if such exclusion resulted from one or more of the causes referred to in the next preceding paragraph, a separate agreement shall be entered into between the Manufacturer and the Guarantor providing for the purchase of such excluded Equipment by the Guarantor, on the terms herein specified, payment to be made in cash on delivery of such Equipment either directly or by means of a conditional sale, equipment trust or such other appropriate method of financing the purchase as the Guarantor and the Manufacturer shall mutually determine.

The Equipment shall be subject to inspection and approval prior to delivery by inspectors or other authorized representatives of the Company (who may be employees of the Guarantor), and the Manufacturer shall grant to such inspectors or such authorized representatives reasonable access to its plant. From time to time upon the completion of the construction of a unit or a number of units of the Equipment, such unit or units shall be presented to such inspector or other authorized representative for inspection at the place designated for delivery of the Equipment and, if each such unit conforms to the Specifications, such inspector or authorized representative shall execute and deliver to the Manufacturer, in such number of counterparts or copies as may reasonably be requested, a certificate of delivery and acceptance (hereinafter called the Certificate of Acceptance) stating that such unit or units have been inspected and accepted on behalf of the Company and are marked in accordance with the provisions of Article 9 hereof; *pro-*

vided, however, that the Manufacturer shall not thereby be relieved of its warranty contained in Item 3 of Annex A hereto.

On delivery of each of the units of Equipment hereunder and acceptance thereof on behalf of the Company as aforesaid, the Company shall assume with respect thereto the responsibility and risk of loss or damage.

ARTICLE 3. *Purchase Price and Payment.* The base price or prices per unit of the Equipment are set forth in Annex B hereto. Such base price or prices are subject to such increase or decrease as is agreed to by the Manufacturer, the Company and the Guarantor. The term "Purchase Price" as used herein shall mean the base price or prices as so increased or decreased. If on any Closing Date (as hereinafter defined in this Article 3) the aggregate of the Invoiced Purchase Prices (as hereinafter defined in this Article 3) for which settlement has theretofore been and is then being made under this Agreement and the Conditional Sale Agreements referred to in Item 4 of Annex A hereto (hereinafter called the Other Agreements), would, but for the provisions of this sentence, exceed \$3,936,534 (or such higher amount as the Company may at its option agree to), the Manufacturer (and any assignee of the Manufacturer) and the Guarantor will, upon request of the Company, enter into an agreement excluding from this Agreement such unit or units of Equipment then proposed to be settled for and specified by the Company, as will, after giving effect to such exclusion and any concurrent exclusion under the Other Agreements, reduce such aggregate Invoiced Purchase Prices under both this Agreement and the Other Agreements to not more than \$3,936,534 (or such higher amount as aforesaid), and the Guarantor agrees to purchase any such unit or units so excluded from this Agreement from Manufacturer for cash on the date such unit or units would

otherwise have been settled for under this Agreement either directly, or, if the Manufacturer and the Guarantor shall mutually agree, by means of a conditional sale, equipment trust or other appropriate method of financing.

For the purpose of settlement therefor, the Equipment shall be divided into not more than two groups of units of the Equipment (each such group being hereinafter called a Group) unless the Company, the Guarantor and the Manufacturer shall otherwise agree; *provided, however*, if the total Purchase Price of the Equipment is less than \$500,000, the Equipment shall all be settled for in one Group. The term "Closing Date" with respect to any Group shall mean such date (not earlier than June 15, 1970 and not later than December 15, 1970), occurring not less than five business days following presentation by the Manufacturer to the Company and the Guarantor of the invoice and the Certificate or Certificates of Acceptance for such Group, as shall be fixed by the Manufacturer by written notice delivered to the Guarantor, the Company and the Assignee (as hereinafter defined) at least five business days prior to the Closing Date designated therein. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York, are authorized to remain closed.

The Company hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash to the Vendor at such place as the Vendor may designate, the Purchase Price of the Equipment, as follows:

- (a) On the Closing Date with respect to each Group (i) an amount equal to 20.9% of the aggregate Purchase Price of such Group plus (ii) the amount by which (x) 79.1% of the aggregate of the Purchase Price of all units of the Equipment covered by this Agreement and the purchase price of all units of railroad

equipment covered by the Other Agreements for which settlement has theretofore and is then being made, as set forth in the invoice or invoices therefor (said invoiced price being herein called the Invoiced Purchase Prices) exceeds (y) the sum of \$3,110,000 and any amount or amounts previously paid or payable with respect to the Invoiced Purchase Prices pursuant to clause (ii) of this subparagraph (a) and clause (ii) of subparagraph (a) of the third paragraph of Article 3 of the Other Agreements (said excess of clause (x) over clause (y) being hereinafter called the Excess Amount); *provided, however*, that if settlement is also being made on such Closing Date for units of railroad equipment under the Other Agreements, the amount payable pursuant to clause (ii) of this subparagraph (a) shall be that proportion of the Excess Amount which the Invoiced Purchase Prices payable on such Closing Date under this Agreement is of the aggregate of all the Invoiced Purchase Prices payable on such Closing Date under this Agreement and the Other Agreements; and

(b) In 20 consecutive semiannual instalments, as hereinafter provided, an amount equal to the aggregate Purchase Price of the units of Equipment in the Group for which settlement is then being made, less the aggregate amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph.

The first instalment of the portion of the Purchase Price of each Group of the Equipment payable pursuant to subparagraph (b) of the preceding paragraph (said portion of the aggregate Purchase Price for all Groups being herein called the Conditional Sale Indebtedness) shall be payable on December 15, 1975, and subsequent instalments shall be payable semiannually thereafter on June 15 and December 15 of each year to and including June 15, 1985 (or if any

such date is not a business day on the next preceding business day), each such date being hereinafter called a Payment Date. The unpaid balance of the Conditional Sale Indebtedness shall bear interest from the Closing Date in respect of which such Conditional Sale Indebtedness was incurred at the rate of $9\frac{3}{8}\%$ per annum and such interest shall be payable, to the extent accrued, on June 15 and December 15 of each year, commencing December 15, 1970 (or if any such date is not a business day on the next preceding business day). The principal amount of Conditional Sale Indebtedness payable on each of the 20 semiannual Payment Dates shall be calculated on such a basis that the aggregate of the principal and interest payable on each Payment Date shall be substantially equal and such 20 installments of principal and interest will completely amortize the Conditional Sale Indebtedness. The Company will furnish to the Vendor and the Guarantor promptly after each Closing Date a schedule, in such number of counterparts as shall be requested by the Vendor, showing the respective amounts of principal and interest payable on each Payment Date.

Interest under this Agreement shall be determined on the basis of a 360-day year of twelve 30-day months.

The Company will pay interest at the rate of $10\frac{1}{4}\%$ per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided in Article 5 hereof, the Company shall not have the privilege of prepaying any portion of the Conditional Sale Indebtedness prior to the date it becomes due.

The parties hereto contemplate (subject to the limitations set forth in the first paragraph of this Article 3) that the Company will furnish that portion of the Purchase Price for each Group of the Equipment as is required under subparagraph (a) of the third paragraph of this Article 3 and that an amount equal to the balance of such Purchase Price shall be paid to the Manufacturer by an assignee of the Manufacturer's right, title and interest under this Agreement pursuant to an Agreement and Assignment dated the date hereof between the Manufacturer and Bankers Trust Company, as Agent (such Agreement and Assignment being hereinafter called the Assignment and such assignee being herein called the Assignee or the Vendor as indicated in Article 27 hereof).

It is agreed that the obligation of the Company to pay to the Vendor any amount required to be paid pursuant to subparagraph (a) of the third paragraph of this Article 3 with respect to any Group of the Equipment is specifically subject to the following conditions:

(a) the documents required by Section 5 of the Assignment shall have been delivered as therein indicated;

(b) no event of default of the Guarantor specified herein nor an Event of Default (as defined in the Lease) of the Lessee under the Lease, nor any event which with the lapse of time and/or notice provided for herein or in the Lease would constitute such an event of default or an Event of Default shall have occurred and be continuing;

(c) the Company shall have received (i) the opinions of counsel required by §§ 14 and 15 of the Lease and (ii) such other documents as the Company may reasonably request; and

(d) the Company and the Guarantor shall have entered into the Other Agreements with the respective parties thereto.

ARTICLE 4. *Title to the Equipment.* The Vendor shall and hereby does retain the full security title to and property in the Equipment until the Company shall have made all the payments provided for hereunder and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Company or the Guarantor as herein provided. Any and all additions to the Equipment and any and all replacements of the Equipment and of parts thereof shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in Article 5 hereof, when and only when the Vendor shall have been paid the full amount of the Purchase Price of all the Equipment, together with interest and all other payments as herein provided, and all the Company's obligations herein contained shall have been performed, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Company without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Company, will, at the expense of the Company, execute appropriate instruments confirming such passage to the Company of title to and property in the Equipment free of all liens and encumbrances created or retained hereby and deliver such instruments to the Company at its address specified in Article 23 hereof, and will, at the expense of the Company, execute in the same manner and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or

thereof during the period when title thereto remains in the Vendor. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price and the conveyance of the Equipment, as provided in Article 4 hereof, or the termination of this Agreement in any manner whatsoever.

The Company will bear the risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any unit of or all the Equipment after delivery to and acceptance thereof by it hereunder.

The agreement of the parties relating to the Manufacturer's warranty of material and workmanship is set forth in Item 3 of Annex A hereto.

ARTICLE 15. *Patent Indemnities.* Except in cases of designs, processes or combinations specified by the Guarantor and not developed or purported to be developed by the Manufacturer, and articles and materials specified by the Guarantor and not manufactured by the Manufacturer, the Manufacturer will indemnify, protect and hold harmless the Company and the Guarantor from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Company or the Guarantor because of the use in or about the construction or operation of the Equipment, or any unit thereof, of any design, process, combination, article or material infringing or claimed to infringe on any patent or other right. The Guarantor likewise will indemnify, protect and hold harmless the Vendor from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendor because of the use

in or about the construction or operation of the Equipment, or any unit thereof, of any design, process or combination specified by the Guarantor and not developed or purported to be developed by the Manufacturer, or article or material specified by the Guarantor and not manufactured by the Manufacturer, which infringes or is claimed to infringe on any patent or other right. The Manufacturer agrees to and hereby does to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, transfer, assign, set over and deliver to the Guarantor every claim, right and cause of action which the Manufacturer has or hereafter shall have against the originator or seller or sellers of any design, process, combination, article or material specified by the Guarantor and not developed or purported to be developed by the Manufacturer and used by the Manufacturer in or about the construction or operation of the Equipment, or any unit thereof, on the ground that any such design, process, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right, and the Manufacturer further agrees to execute and deliver to the Guarantor all such further assurances as may be reasonably requested by the Guarantor more fully to effectuate the assignment, transfer and delivery of every such claim, right and cause of action. The Manufacturer will give notice to the Guarantor of any claim known to the Manufacturer on the basis of which liability may be charged against the Guarantor hereunder, and the Company and the Guarantor will each give notice to the Manufacturer of any claim known to either of them, as the case may be, on the basis of which liability may be charged against the Manufacturer hereunder.

ARTICLE 16. *Assignments.* The Company will not sell, assign or transfer its rights under this Agreement or, except

as provided in Article 12 hereof, transfer the right to possession of any unit of the Equipment unless such assignment or transfer is made expressly subject in all respects to the rights and remedies of the Vendor hereunder. Any such assignment or transfer may be made by the Company without the assignee or transferee assuming any of the obligations of the Company hereunder (and the Company shall, in such event, remain liable for all of the obligations of the Company hereunder), but shall be subject to the rights and remedies of the Vendor hereunder (including, without limitation, rights and remedies against the Company and the Guarantor).

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Company and the benefits arising from the undertakings of the Guarantor hereunder, may be assigned by the Vendor and re-assigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Manufacturer from, any of the obligations of the Manufacturer to construct and to deliver the Equipment in accordance herewith or to respond to its warranties and agreements contained or referred to in Articles 14 and 15 hereof and Annex A hereto, or relieve the Company or the Guarantor of their respective obligations to the Manufacturer contained or referred to in Articles 1, 2, 3, 6, 10, 14 and 15 hereof or in the last paragraph of this Article 16 or in Annex A hereto, or any other obligation which, according to its terms and context, is intended to survive an assignment.

Upon any such assignment either the assignor or the assignee shall give written notice to the Company and the Guarantor, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall, by virtue of such

assignment, acquire all the Vendor's right, title and interest in and to the Equipment, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Company and the Guarantor, respectively, of the notification of any such assignment, all payments thereafter to be made by the Company or the Guarantor hereunder shall, to the extent so assigned, be made to the assignee at the address of the assignee.

The Company and the Guarantor recognize that it is the custom of railroad equipment manufacturers or sellers to assign agreements of this character and understand that the assignment of this Agreement, or of some of or all the rights of the Vendor hereunder, is contemplated. The Company and the Guarantor expressly represent, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all of or any of the rights of the Vendor hereunder, and for the purpose of inducing such acquisition, that in the event of such assignment by the Vendor as hereinbefore provided the rights of such assignee to the entire unpaid Purchase Price of the Equipment or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Manufacturer with respect to the Equipment or the delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Company or the Guarantor by the Manufacturer. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Company or the Guarantor, as the case may be, against and only against the Manufacturer.

In the event of any such assignment or successive assignments by the Vendor of title to the Equipment and of the Vendor's rights hereunder with respect thereto, the Company will, whenever requested by such assignee, replace the words marked on each side of each unit of the Equipment to indicate the title of an assignee to the Equipment with such words as shall be specified by such assignee, subject to the requirements of the laws of the jurisdictions in which the Equipment shall be operated relating to such words for use on equipment covered by conditional sale agreements with respect to railroad equipment. The cost of marking such words with respect to the first assignee of this Agreement (or to a successor agent in case the first assignee is an agent) shall be borne by the Manufacturer. The cost of marking such words in connection with any subsequent assignment (other than to a successor agent if the first assignee is an agent) shall be borne by the Guarantor.

The Company and the Guarantor will, in connection with settlement for any Group of the Equipment, deliver to the assignee, at the time of delivery by the Guarantor of notice fixing the Closing Date with respect to such Group, all documents required by the terms of the assignment to be delivered to the assignee in connection with such settlement, in such number of counterparts as may reasonably be requested, except for any opinion of counsel for the assignee.

Notwithstanding the provisions of the last paragraph of Article 3 hereof, if the Manufacturer shall not receive on the Closing Date with respect to a Group of the Equipment the aggregate Purchase Price in respect of such Group, the Manufacturer will promptly notify the Company and the Guarantor of such event and, if such amount shall not have been previously paid, such Group of the Equipment shall be excluded from this Agreement and the Guarantor will, not later than 90 days after such Closing Date, purchase such Group from the Manufacturer for cash, together with inter-

est thereon from such Closing Date to the date of payment by the Guarantor at the average prime rate of interest of the five largest New York City banks in effect at 11:00 a.m., New York time, on such Closing Date.

ARTICLE 17. *Defaults.* In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) The Company shall fail to pay in full any sum payable by the Company when payment thereof shall be due hereunder and such default shall continue for six days; or

(b) The Company or the Guarantor shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any covenant, agreement, term or provision of this Agreement on its part to be kept and performed or to make provision satisfactory to the Vendor for such compliance; or

(c) Any proceeding shall be commenced by or against the Company or the Guarantor for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the indebtedness payable hereunder) and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Company or the Guarantor, as the case may be, under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Company or the

The Manufacturer further agrees with the Company and the Guarantor that neither the inspection as provided in Article 2 of the Agreement, nor any examination, nor the acceptance of any units of the Equipment as provided in Article 2 of the Agreement shall be deemed a waiver or a modification by the Company of any of its rights under this Item 3.

Item 4: The two Conditional Sale Agreements dated as of May 1, 1970, among the Company, the Guarantor and Thrall Car Manufacturing Company and The Darby Products of Steel Plate Corporation, respectively.

ADDITIONAL AGREEMENTS

Notwithstanding anything to the contrary contained in the Agreement, it is understood and agreed that there will be incorporated in each unit of the Equipment a limited number of used components which will be remanufactured by the Manufacturer and will be the equivalent of new components.

The Manufacturer reserves the right to make changes in the design of, or add any improvements to, units of the Equipment at any time without incurring any obligation to make similar changes or additions in respect of units of the Equipment previously delivered to the Company.

It is further agreed that the last paragraph of Article 2 of the Agreement shall not be applicable, and that the following paragraph is applicable in lieu thereof:

"On delivery of each of the Units of Equipment hereunder to the carrier F.O.B. McCook, Illinois, the Guarantor shall assume with respect thereto the responsibility and risk of loss or damage until delivery to and acceptance thereof on behalf of the Company."

ANNEX B—GENERAL MOTORS

Type	Manufacturer's Specifications	Manufacturer's Plant	Quantity	Lessee's Road Numbers	Unit Base Price*	Total Base Price	Time and Place of Delivery
3000 H.P. Model SD-40 Diesel Locomotive	<div> 8054 dated 12/15/67 as amended by Specification 8054-3 dated 7/1/68 and supplement dated 4/23/69 </div>	McCook, Illinois	1	626	\$299,500	\$ 299,500	Prior to June 30, 1970, at Bloomburg, Texas
3000 H.P. Model SD-40 Diesel Locomotive		McCook, Illinois	1	627	\$298,500	\$ 298,500	Prior to June 30, 1970, at Bloomburg, Texas
3000 H.P. Model SD-40 Diesel Locomotive		McCook, Illinois	4	622-625 (inclusive)	\$269,250	\$1,077,000	Prior to June 30, 1970, at Bloomburg, Texas

*F.O.B. McCook, Illinois plus estimated freight to Bloomburg, Texas, of \$4,000 per unit.

ANNEX C

LEASE OF RAILROAD EQUIPMENT

by and between

VINEYARD CAR CORPORATION

and

**THE KANSAS CITY SOUTHERN RAILWAY
COMPANY**

Dated as of May 1, 1970

thereof during the period when title thereto remains in the Vendor. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price and the conveyance of the Equipment, as provided in Article 4 hereof, or the termination of this Agreement in any manner whatsoever.

The Company will bear the risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any unit of or all the Equipment after delivery to and acceptance thereof by it hereunder.

The agreement of the parties relating to the Manufacturer's warranty of material and workmanship is set forth in Item 3 of Annex A hereto.

ARTICLE 15. *Patent Indemnities.* Except in cases of designs, processes or combinations specified by the Guarantor and not developed or purported to be developed by the Manufacturer, and articles and materials specified by the Guarantor and not manufactured by the Manufacturer, the Manufacturer will indemnify, protect and hold harmless the Company and the Guarantor from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Company or the Guarantor because of the use in or about the construction or operation of the Equipment, or any unit thereof, of any design, process, combination, article or material infringing or claimed to infringe on any patent or other right. The Guarantor likewise will indemnify, protect and hold harmless the Vendor from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendor because of the use

in or about the construction or operation of the Equipment, or any unit thereof, of any design, process or combination specified by the Guarantor and not developed or purported to be developed by the Manufacturer, or article or material specified by the Guarantor and not manufactured by the Manufacturer, which infringes or is claimed to infringe on any patent or other right. The Manufacturer agrees to and hereby does to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, transfer, assign, set over and deliver to the Guarantor every claim, right and cause of action which the Manufacturer has or hereafter shall have against the originator or seller or sellers of any design, process, combination, article or material specified by the Guarantor and not developed or purported to be developed by the Manufacturer and used by the Manufacturer in or about the construction or operation of the Equipment, or any unit thereof, on the ground that any such design, process, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right, and the Manufacturer further agrees to execute and deliver to the Guarantor all such further assurances as may be reasonably requested by the Guarantor more fully to effectuate the assignment, transfer and delivery of every such claim, right and cause of action. The Manufacturer will give notice to the Guarantor of any claim known to the Manufacturer on the basis of which liability may be charged against the Guarantor hereunder, and the Company and the Guarantor will each give notice to the Manufacturer of any claim known to either of them, as the case may be, on the basis of which liability may be charged against the Manufacturer hereunder.

ARTICLE 16. *Assignments.* The Company will not sell, assign or transfer its rights under this Agreement or, except

as provided in Article 12 hereof, transfer the right to possession of any unit of the Equipment unless such assignment or transfer is made expressly subject in all respects to the rights and remedies of the Vendor hereunder. Any such assignment or transfer may be made by the Company without the assignee or transferee assuming any of the obligations of the Company hereunder (and the Company shall, in such event, remain liable for all of the obligations of the Company hereunder), but shall be subject to the rights and remedies of the Vendor hereunder (including, without limitation, rights and remedies against the Company and the Guarantor).

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Company and the benefits arising from the undertakings of the Guarantor hereunder, may be assigned by the Vendor and re-assigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Manufacturer from, any of the obligations of the Manufacturer to construct and to deliver the Equipment in accordance herewith or to respond to its warranties and agreements contained or referred to in Articles 14 and 15 hereof and Annex A hereto, or relieve the Company or the Guarantor of their respective obligations to the Manufacturer contained or referred to in Articles 1, 2, 3, 6, 10, 14 and 15 hereof or in the last paragraph of this Article 16 or in Annex A hereto, or any other obligation which, according to its terms and context, is intended to survive an assignment.

Upon any such assignment either the assignor or the assignee shall give written notice to the Company and the Guarantor, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall, by virtue of such

assignment, acquire all the Vendor's right, title and interest in and to the Equipment, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Company and the Guarantor, respectively, of the notification of any such assignment, all payments thereafter to be made by the Company or the Guarantor hereunder shall, to the extent so assigned, be made to the assignee at the address of the assignee.

The Company and the Guarantor recognize that it is the custom of railroad equipment manufacturers or sellers to assign agreements of this character and understand that the assignment of this Agreement, or of some of or all the rights of the Vendor hereunder, is contemplated. The Company and the Guarantor expressly represent, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all of or any of the rights of the Vendor hereunder, and for the purpose of inducing such acquisition, that in the event of such assignment by the Vendor as hereinbefore provided the rights of such assignee to the entire unpaid Purchase Price of the Equipment or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Manufacturer with respect to the Equipment or the delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Company or the Guarantor by the Manufacturer. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Company or the Guarantor, as the case may be, against and only against the Manufacturer.

In the event of any such assignment or successive assignments by the Vendor of title to the Equipment and of the Vendor's rights hereunder with respect thereto, the Company will, whenever requested by such assignee, replace the words marked on each side of each unit of the Equipment to indicate the title of an assignee to the Equipment with such words as shall be specified by such assignee, subject to the requirements of the laws of the jurisdictions in which the Equipment shall be operated relating to such words for use on equipment covered by conditional sale agreements with respect to railroad equipment. The cost of marking such words with respect to the first assignee of this Agreement (or to a successor agent in case the first assignee is an agent) shall be borne by the Manufacturer. The cost of marking such words in connection with any subsequent assignment (other than to a successor agent if the first assignee is an agent) shall be borne by the Guarantor.

The Company and the Guarantor will, in connection with settlement for any Group of the Equipment, deliver to the assignee, at the time of delivery by the Guarantor of notice fixing the Closing Date with respect to such Group, all documents required by the terms of the assignment to be delivered to the assignee in connection with such settlement, in such number of counterparts as may reasonably be requested, except for any opinion of counsel for the assignee.

Notwithstanding the provisions of the last paragraph of Article 3 hereof, if the Manufacturer shall not receive on the Closing Date with respect to a Group of the Equipment the aggregate Purchase Price in respect of such Group, the Manufacturer will promptly notify the Company and the Guarantor of such event and, if such amount shall not have been previously paid, such Group of the Equipment shall be excluded from this Agreement and the Guarantor will, not later than 90 days after such Closing Date, purchase such Group from the Manufacturer for cash, together with inter-

est thereon from such Closing Date to the date of payment by the Guarantor at the average prime rate of interest of the five largest New York City banks in effect at 11:00 a.m., New York time, on such Closing Date.

ARTICLE 17. *Defaults.* In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) The Company shall fail to pay in full any sum payable by the Company when payment thereof shall be due hereunder and such default shall continue for six days; or

(b) The Company or the Guarantor shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any covenant, agreement, term or provision of this Agreement on its part to be kept and performed or to make provision satisfactory to the Vendor for such compliance; or

(c) Any proceeding shall be commenced by or against the Company or the Guarantor for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the indebtedness payable hereunder) and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Company or the Guarantor, as the case may be, under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Company or the

The Manufacturer further agrees with the Company and the Guarantor that neither the inspection as provided in Article 2 of the Agreement, nor any examination, nor the acceptance of any units of the Equipment as provided in Article 2 of the Agreement shall be deemed a waiver or a modification by the Company of any of its rights under this Item 3.

Item 4: The two Conditional Sale Agreements dated as of May 1, 1970, among the Company, the Guarantor and Thrall Car Manufacturing Company and The Darby Products of Steel Plate Corporation, respectively.

ADDITIONAL AGREEMENTS

Notwithstanding anything to the contrary contained in the Agreement, it is understood and agreed that there will be incorporated in each unit of the Equipment a limited number of used components which will be remanufactured by the Manufacturer and will be the equivalent of new components.

The Manufacturer reserves the right to make changes in the design of, or add any improvements to, units of the Equipment at any time without incurring any obligation to make similar changes or additions in respect of units of the Equipment previously delivered to the Company.

It is further agreed that the last paragraph of Article 2 of the Agreement shall not be applicable, and that the following paragraph is applicable in lieu thereof:

"On delivery of each of the Units of Equipment hereunder to the carrier F.O.B. McCook, Illinois, the Guarantor shall assume with respect thereto the responsibility and risk of loss or damage until delivery to and acceptance thereof on behalf of the Company."

ANNEX B—GENERAL MOTORS

Type	Manufacturer's Specifications	Manufacturer's Plant	Quantity	Lessee's Road Numbers	Unit Base Price*	Total Base Price	Time and Place of Delivery
3000 H.P. Model SD-40 Diesel Locomotive	<div> 8054 dated 12/15/67 as amended by Specification 8054-3 dated 7/1/68 and supplement dated 4/23/69 </div>	McCook, Illinois	1	626	\$299,500	\$ 299,500	Prior to June 30, 1970, at Bloomburg, Texas
3000 H.P. Model SD-40 Diesel Locomotive		McCook, Illinois	1	627	\$298,500	\$ 298,500	Prior to June 30, 1970, at Bloomburg, Texas
3000 H.P. Model SD-40 Diesel Locomotive		McCook, Illinois	4	622-625 (inclusive)	\$269,250	\$1,077,000	Prior to June 30, 1970, at Bloomburg, Texas

*F.O.B. McCook, Illinois plus estimated freight to Bloomburg, Texas, of \$4,000 per unit.

ANNEX C

LEASE OF RAILROAD EQUIPMENT

by and between

VINEYARD CAR CORPORATION

and

**THE KANSAS CITY SOUTHERN RAILWAY
COMPANY**

Dated as of May 1, 1970

The Lessee agrees that during the term of this Lease, it will not assign any Unit to service involving the regular operation and maintenance thereof outside the United States of America.

§ 12. *Purchase and Renewal Options.* Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may:

(i) with respect to Units which are locomotives, by written notice delivered to the Lessor not less than six months prior to the end of the term of this Lease in respect of such Units, elect to purchase all, but not fewer than all, such Units covered by this Lease at the end of such term of this Lease for a purchase price equal to the "Fair Market Value" of such Units as of the end of such term; and

(ii) with respect to Units which are not locomotives, by written notice delivered to the Lessor not less than six months prior to the end of the original term of this Lease or any extended term hereof, as the case may be, elect (a) to extend the term of this Lease in respect of all, but not fewer than all, of such Units then covered by this Lease, for additional five-year periods commencing on the scheduled expiration of the original term or extended term of this Lease, as the case may be, provided that no such extended term shall extend beyond December 15, 2000, at a rental payable in 10 semiannual payments, each in an amount equal to the following percentages of the Purchase Price of such Unit: during the first five-year period, 2.7785%; during the second five-year period, 1.8520%; and during the final five-year period, 1.3895%; such semiannual payments to be made on the business day next preceding December 15 and June 15 in each year of the applicable extended term

STATE OF ILLINOIS }
COUNTY OF COOK } ss.:

On this 2nd day of May, 1970, before me personally appeared **B. B. BROWNELL**, to me personally known, who, being by me duly sworn, says that he is a Vice President of GENERAL MOTORS CORPORATION (Electro-Motive Division), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

.....*[Signature]*.....
Notary Public

[NOTARIAL SEAL]

My Commission expires OCTOBER 28, 1971

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

On this 2nd day of ^{June}~~May~~, 1970, before me personally appeared **C. D. BLAKELY**, to me personally known, who, being by me duly sworn, says that he is a Vice President of BANKERS TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

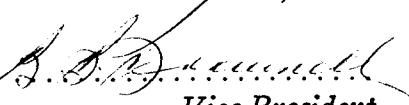
.....*[Signature]*.....

[NOTARIAL SEAL]

CHRISTINE GERACE
Notary Public, State of New York
No. 24-1407147
Qualified in Kings County
Certificate filed in New York County
Commission Expires March 30, 1971

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by duly authorized officers, and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

GENERAL MOTORS CORPORATION
(Electro-Motive Division)

by 
Vice President




[CORPORATE SEAL]

Attest:


Assistant Secretary

BANKERS TRUST COMPANY,
as Agent,

by 
Vice President

[CORPORATE SEAL]

Attest:


Assistant Secretary

the Guarantor) it is a valid and existing agreement binding upon the Manufacturer; and

(b) covenants and agrees that it will from time to time and at all times, at the request of the Assignee or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary or appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended to be.

SECTION 8. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of New York; *provided, however*, that the parties shall be entitled to all the rights conferred by Section 20c of the Interstate Commerce Act, such additional rights arising out of the filing, recording or depositing of the Conditional Sale Agreement and this Assignment as shall be conferred by the laws of the several jurisdictions in which the Conditional Sale Agreement or this Assignment shall be filed, recorded or deposited, or in which any unit of the Equipment shall be located, and any rights arising out of the marking on the units of the Equipment.

SECTION 9. This Assignment may be executed in any number of counterparts, but the counterpart delivered to the Assignee shall be deemed to be the original counterpart. Although this Assignment is dated as of May 1, 1970, for convenience only, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

furnished to the Assignee by the Investor named in the Finance Agreement and upon payment by the Company of the amount required to be paid by it pursuant to subparagraph (a) of the third paragraph of Article 3 of the Conditional Sale Agreement.

The Assignee shall not be obligated to make any of the above-mentioned payments at any time while an event of default, or any event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement will constitute an event of default, shall be subsisting under the Conditional Sale Agreement.

In the event that the Assignee shall not make any payment to be made by it as herein provided, the Assignee shall reassign to the Manufacturer, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of the Equipment with respect to which such payment has not been made by the Assignee.

SECTION 6. The Assignee may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Company or the Guarantor thereunder. In the event of any such assignment any such subsequent or successive assignee or assignees shall, to the extent of such assignment, and upon giving the written notice required in Article 16 of the Conditional Sale Agreement, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 7. The Manufacturer hereby:

(a) represents and warrants to the Assignee, its successors and assigns, that the Conditional Sale Agreement was duly authorized and lawfully executed and delivered by it for a valid consideration, that (assuming due authorization, execution and delivery by the Company and

the Conditional Sale Agreement by the Company and the Guarantor and of this Assignment by the Assignee) are valid instruments binding upon the Manufacturer and enforceable against the Manufacturer in accordance with their terms; and

(i) Unless payment of the amount payable pursuant to subparagraph (a) of the third paragraph of Article 3 of the Conditional Sale Agreement shall be made by the Assignee with funds furnished to it for that purpose by the Company, a receipt from the Manufacturer for such payment.

In giving the opinions specified in this Section 5, counsel may qualify any opinion to the effect that any agreement is a valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally. In giving the opinions specified in subparagraphs (e), (f) and (g) of the first paragraph of this Section 5, counsel may in fact rely as to the title to the units at the time of delivery to the Company upon the opinion of counsel for the Manufacturer. In giving the opinions specified in subparagraphs (e) and (f) of the first paragraph of this Section 5, Messrs. Cravath, Swaine & Moore and counsel for the Company may in fact rely, as to any matters governed by the law of any jurisdiction other than New York or the United States, on the opinion of counsel for the Manufacturer or the Guarantor as to such matters.

The obligation of the Assignee hereunder to make payment for any group of the Equipment is hereby expressly conditioned upon the prior receipt by the Assignee, pursuant to the Finance Agreement, of all the funds to be

(i) the Company is a duly organized and existing corporation in good standing under the laws of the jurisdiction of its incorporation, and has the power and authority to own its properties and to carry on its business as now conducted, and (ii) the Conditional Sale Agreement and the Lease have been duly authorized, executed and delivered on behalf of the Company and are valid and binding instruments enforceable against the Company in accordance with their terms;

(g) Opinion dated such Closing Date of counsel for the Guarantor, addressed to the Assignee and the Company, to the effect set forth in clauses (i), (v), (vi) and (vii) of subparagraph (e) above and stating that (i) the Guarantor is a duly organized and existing corporation in good standing under the laws of the jurisdiction of its incorporation, and has the power and authority to own its properties and to carry on its business as now conducted, and (ii) the Conditional Sale Agreement and the Lease have been duly authorized, executed and delivered on behalf of the Guarantor and are valid and binding instruments enforceable against the Guarantor in accordance with their terms;

(h) Opinion dated such Closing Date of counsel for the Manufacturer addressed to the Assignee and the Company, to the effect set forth in clauses (iv) and (v) of subparagraph (e) above and stating that (i) the Manufacturer is a duly organized and existing corporation in good standing under the laws of the jurisdiction of its incorporation, and has the power and authority to own its properties and to carry on its business as now conducted, and (ii) the Conditional Sale Agreement and this Assignment have been duly authorized, executed and delivered by the Manufacturer and (assuming due authorization, execution and delivery of

cuted and delivered by the respective parties thereto and is a valid and binding instrument enforceable in accordance with its terms, (iii) this Assignment has been duly authorized, executed and delivered by the respective parties hereto and is a valid and binding instrument, (iv) the Assignee is vested with all the rights, titles, interests, powers, privileges and remedies purported to be assigned to it by this Assignment, (v) security title to the units of the Equipment in the Group is validly vested in the Assignee and such units, at the time of delivery thereof to the Company under the Conditional Sale Agreement, were free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Company under the Conditional Sale Agreement and the rights of the Guarantor under the Lease, (vi) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of the Finance Agreement, the Conditional Sale Agreement or this Assignment, or if any approval is necessary it has been obtained, (vii) the Conditional Sale Agreement and this Assignment have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and no other filing or recordation is necessary for the protection of the rights of the Assignee in any state of the United States of America, and (viii) registration of the Conditional Sale Agreement, this Assignment or the certificates of interest delivered pursuant to the Finance Agreement is not required under the Securities Act of 1933, as amended and qualification of an indenture with respect thereto is not required under the Trust Indenture Act of 1939, as amended;

(f) Opinion dated such Closing Date of counsel for the Company, addressed to the Assignee, stating that

security title to the units of the Equipment in the Group and warranting to the Assignee and to the Company that at the time of delivery to the Company under the Conditional Sale Agreement the Manufacturer had legal title to such units and good and lawful right to sell such units and title to such units was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Company under the Conditional Sale Agreement and the rights of the Guarantor under the Lease;

(b) Certificate or Certificates of Acceptance with respect to the units of Equipment in the Group as contemplated by Article 2 of the Conditional Sale Agreement and the Certificate or Certificates of Delivery pursuant to § 1 of the Lease;

(c) Certificate of an officer of the Guarantor to the effect that prior to delivery and acceptance of units of the Equipment under the Conditional Sale Agreement and the Lease, none of the units of the Equipment was placed in the service of the Guarantor or otherwise was used by the Guarantor;

(d) Invoices addressed to the Assignee for the units of the Equipment in the Group accompanied by or having endorsed thereon a certification by the Company and the Guarantor as to the correctness of the prices of such units as set forth in said invoices;

(e) Opinion dated such Closing Date of Messrs. Cravath, Swaine & Moore, who are acting as special counsel for the Assignee, addressed to the Assignee and the Investor under the Finance Agreement, stating that (i) the Finance Agreement has been duly authorized, executed and delivered by the Guarantor and is a valid instrument binding on the Guarantor, (ii) the Conditional Sale Agreement has been duly authorized, exe-

lien, security interest or other encumbrance on any units of the Equipment in respect of which the Assignee pays to the Manufacturer the amount to be paid under Section 5 hereof.

SECTION 3. The Manufacturer will cause to be plainly, distinctly, permanently and conspicuously marked on each side of each unit of the Equipment, at the time of delivery thereof to the Company, in letters not less than one inch in height, the following legend:

"BANKERS TRUST COMPANY,
NEW YORK, NEW YORK, AGENT-OWNER".

SECTION 4. Upon request of the Assignee, its successors and assigns, the Manufacturer will execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of the Manufacturer therein or in the Equipment.

SECTION 5. The Assignee, on each Closing Date fixed as provided in Article 3 of the Conditional Sale Agreement with respect to a Group (as defined in said Article 3) of the Equipment, shall pay to the Manufacturer an amount equal to that portion of the Purchase Price (as defined in said Article 3) of such Group not required to be paid pursuant to subparagraph (a) of the third paragraph of said Article 3, provided that there shall have been delivered to the Assignee (with a signed counterpart to the Company) the following documents, in such number of counterparts or copies as may reasonably be requested, in form and substance satisfactory to it and to its special counsel hereinafter mentioned:

(a) Bill of Sale from the Manufacturer to the Assignee, confirming the transfer to the Assignee of

reason of any defense, setoff or counterclaim whatsoever arising by reason of any other liability at any time of the Manufacturer to the Company or the Guarantor. The Assignee will give notice to the Manufacturer of any suit or proceeding by the Assignee herein described, and will move or take other appropriate action, on the basis of Article 16 of the Conditional Sale Agreement, to strike any defense, setoff or counterclaim asserted by the Company or the Guarantor therein, and if the court or other body having jurisdiction in such suit or proceeding denies such motion or other action and accepts such defense, setoff or counterclaim as a triable issue in such suit or proceeding, the Assignee will notify the Manufacturer thereof and the Manufacturer will thereafter be given the right by the Assignee, at the Manufacturer's expense, to settle or defend such defense, setoff or counterclaim.

Except as set forth in any Additional Agreements set forth in Annex A to the Conditional Sale Agreement and except in cases of designs, processes or combinations specified by the Guarantor and not developed or purported to be developed by the Manufacturer, and articles and materials specified by the Guarantor and not manufactured by the Manufacturer, the Manufacturer agrees to indemnify, protect and hold harmless the Assignee from, and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use of any design, process, combination, article or material infringing or claimed to infringe on any patent or other right in or about the construction or operation of the Equipment, or any unit thereof.

The Manufacturer agrees that any amount payable to it by the Company or the Guarantor, whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to the Assignee, shall not be secured by any claim,

§ 19. *Severability; Effect and Modification of Lease.* Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the Units and supersedes all other agreements, oral or written, with respect to the Units. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Lessor and the Lessee.

§ 20. *Execution.* This Lease may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument. Although this Lease is dated as of May 1, 1970, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

§ 21. *Law Governing.* The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of New York; *provided, however*, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by

The Manufacturer further agrees with the Company and the Guarantor that neither the inspection as provided in Article 2 of the Agreement, nor any examination, nor the acceptance of any units of the Equipment as provided in Article 2 of the Agreement shall be deemed a waiver or a modification by the Company of any of its rights under this Item 3.

Item 4: The two Conditional Sale Agreements dated as of May 1, 1970, among the Company, the Guarantor and Thrall Car Manufacturing Company and The Darby Products of Steel Plate Corporation, respectively.

ADDITIONAL AGREEMENTS

Notwithstanding anything to the contrary contained in the Agreement, it is understood and agreed that there will be incorporated in each unit of the Equipment a limited number of used components which will be remanufactured by the Manufacturer and will be the equivalent of new components.

The Manufacturer reserves the right to make changes in the design of, or add any improvements to, units of the Equipment at any time without incurring any obligation to make similar changes or additions in respect of units of the Equipment previously delivered to the Company.

It is further agreed that the last paragraph of Article 2 of the Agreement shall not be applicable, and that the following paragraph is applicable in lieu thereof:

"On delivery of each of the Units of Equipment hereunder to the carrier F.O.B. McCook, Illinois, the Guarantor shall assume with respect thereto the responsibility and risk of loss or damage until delivery to and acceptance thereof on behalf of the Company."

ANNEX B—GENERAL MOTORS

Type	Manufacturer's Specifications	Manufacturer's Plant	Quantity	Lessee's Road Numbers	Unit Base Price*	Total Base Price	Time and Place of Delivery
3000 H.P. Model SD-40 Diesel Locomotive	<div> 8054 dated 12/15/67 as amended by Specification 8054-3 dated 7/1/68 and supplement dated 4/23/69 </div>	McCook, Illinois	1	626	\$299,500	\$ 299,500	Prior to June 30, 1970, at Bloomburg, Texas
3000 H.P. Model SD-40 Diesel Locomotive		McCook, Illinois	1	627	\$298,500	\$ 298,500	Prior to June 30, 1970, at Bloomburg, Texas
3000 H.P. Model SD-40 Diesel Locomotive		McCook, Illinois	4	622-625 (inclusive)	\$269,250	\$1,077,000	Prior to June 30, 1970, at Bloomburg, Texas

*F.O.B. McCook, Illinois plus estimated freight to Bloomburg, Texas, of \$4,000 per unit.

ANNEX C

LEASE OF RAILROAD EQUIPMENT

by and between

VINEYARD CAR CORPORATION

and

**THE KANSAS CITY SOUTHERN RAILWAY
COMPANY**

Dated as of May 1, 1970

The Lessee agrees that during the term of this Lease, it will not assign any Unit to service involving the regular operation and maintenance thereof outside the United States of America.

§ 12. *Purchase and Renewal Options.* Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may:

(i) with respect to Units which are locomotives, by written notice delivered to the Lessor not less than six months prior to the end of the term of this Lease in respect of such Units, elect to purchase all, but not fewer than all, such Units covered by this Lease at the end of such term of this Lease for a purchase price equal to the "Fair Market Value" of such Units as of the end of such term; and

(ii) with respect to Units which are not locomotives, by written notice delivered to the Lessor not less than six months prior to the end of the original term of this Lease or any extended term hereof, as the case may be, elect (a) to extend the term of this Lease in respect of all, but not fewer than all, of such Units then covered by this Lease, for additional five-year periods commencing on the scheduled expiration of the original term or extended term of this Lease, as the case may be, provided that no such extended term shall extend beyond December 15, 2000, at a rental payable in 10 semiannual payments, each in an amount equal to the following percentages of the Purchase Price of such Unit: during the first five-year period, 2.7785%; during the second five-year period, 1.8520%; and during the final five-year period, 1.3895%; such semiannual payments to be made on the business day next preceding December 15 and June 15 in each year of the applicable extended term

STATE OF ILLINOIS }
COUNTY OF COOK } ss.:

On this 2nd day of May, 1970, before me personally appeared **B. B. BROWNELL**, to me personally known, who, being by me duly sworn, says that he is a Vice President of GENERAL MOTORS CORPORATION (Electro-Motive Division), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

.....
Notary Public

[NOTARIAL SEAL]

My Commission expires OCTOBER 28, 1971

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

On this 2nd day of ^{June} May, 1970, before me personally appeared **C. D. BLAKELY**, to me personally known, who, being by me duly sworn, says that he is a Vice President of BANKERS TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

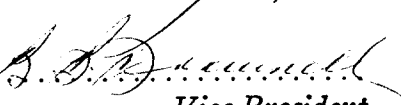
.....
Christine Gerace

[NOTARIAL SEAL]

CHRISTINE GERACE
Notary Public, State of New York
No. 24-1407147
Qualified in Kings County
Certificate filed in New York County
Commission Expires March 30, 1971

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by duly authorized officers, and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

GENERAL MOTORS CORPORATION
(Electro-Motive Division)

by 
Vice President




[CORPORATE SEAL]

Attest:


Assistant Secretary

BANKERS TRUST COMPANY,
as Agent,

by 
Vice President

[CORPORATE SEAL]

Attest:


Assistant Secretary

the Guarantor) it is a valid and existing agreement binding upon the Manufacturer; and

(b) covenants and agrees that it will from time to time and at all times, at the request of the Assignee or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary or appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended to be.

SECTION 8. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of New York; *provided, however*, that the parties shall be entitled to all the rights conferred by Section 20c of the Interstate Commerce Act, such additional rights arising out of the filing, recording or depositing of the Conditional Sale Agreement and this Assignment as shall be conferred by the laws of the several jurisdictions in which the Conditional Sale Agreement or this Assignment shall be filed, recorded or deposited, or in which any unit of the Equipment shall be located, and any rights arising out of the marking on the units of the Equipment.

SECTION 9. This Assignment may be executed in any number of counterparts, but the counterpart delivered to the Assignee shall be deemed to be the original counterpart. Although this Assignment is dated as of May 1, 1970, for convenience only, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

furnished to the Assignee by the Investor named in the Finance Agreement and upon payment by the Company of the amount required to be paid by it pursuant to subparagraph (a) of the third paragraph of Article 3 of the Conditional Sale Agreement.

The Assignee shall not be obligated to make any of the above-mentioned payments at any time while an event of default, or any event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement will constitute an event of default, shall be subsisting under the Conditional Sale Agreement.

In the event that the Assignee shall not make any payment to be made by it as herein provided, the Assignee shall reassign to the Manufacturer, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of the Equipment with respect to which such payment has not been made by the Assignee.

SECTION 6. The Assignee may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Company or the Guarantor thereunder. In the event of any such assignment any such subsequent or successive assignee or assignees shall, to the extent of such assignment, and upon giving the written notice required in Article 16 of the Conditional Sale Agreement, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 7. The Manufacturer hereby:

(a) represents and warrants to the Assignee, its successors and assigns, that the Conditional Sale Agreement was duly authorized and lawfully executed and delivered by it for a valid consideration, that (assuming due authorization, execution and delivery by the Company and

the Conditional Sale Agreement by the Company and the Guarantor and of this Assignment by the Assignee) are valid instruments binding upon the Manufacturer and enforceable against the Manufacturer in accordance with their terms; and

(i) Unless payment of the amount payable pursuant to subparagraph (a) of the third paragraph of Article 3 of the Conditional Sale Agreement shall be made by the Assignee with funds furnished to it for that purpose by the Company, a receipt from the Manufacturer for such payment.

In giving the opinions specified in this Section 5, counsel may qualify any opinion to the effect that any agreement is a valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally. In giving the opinions specified in subparagraphs (e), (f) and (g) of the first paragraph of this Section 5, counsel may in fact rely as to the title to the units at the time of delivery to the Company upon the opinion of counsel for the Manufacturer. In giving the opinions specified in subparagraphs (e) and (f) of the first paragraph of this Section 5, Messrs. Cravath, Swaine & Moore and counsel for the Company may in fact rely, as to any matters governed by the law of any jurisdiction other than New York or the United States, on the opinion of counsel for the Manufacturer or the Guarantor as to such matters.

The obligation of the Assignee hereunder to make payment for any group of the Equipment is hereby expressly conditioned upon the prior receipt by the Assignee, pursuant to the Finance Agreement, of all the funds to be

(i) the Company is a duly organized and existing corporation in good standing under the laws of the jurisdiction of its incorporation, and has the power and authority to own its properties and to carry on its business as now conducted, and (ii) the Conditional Sale Agreement and the Lease have been duly authorized, executed and delivered on behalf of the Company and are valid and binding instruments enforceable against the Company in accordance with their terms;

(g) Opinion dated such Closing Date of counsel for the Guarantor, addressed to the Assignee and the Company, to the effect set forth in clauses (i), (v), (vi) and (vii) of subparagraph (e) above and stating that (i) the Guarantor is a duly organized and existing corporation in good standing under the laws of the jurisdiction of its incorporation, and has the power and authority to own its properties and to carry on its business as now conducted, and (ii) the Conditional Sale Agreement and the Lease have been duly authorized, executed and delivered on behalf of the Guarantor and are valid and binding instruments enforceable against the Guarantor in accordance with their terms;

(h) Opinion dated such Closing Date of counsel for the Manufacturer addressed to the Assignee and the Company, to the effect set forth in clauses (iv) and (v) of subparagraph (e) above and stating that (i) the Manufacturer is a duly organized and existing corporation in good standing under the laws of the jurisdiction of its incorporation, and has the power and authority to own its properties and to carry on its business as now conducted, and (ii) the Conditional Sale Agreement and this Assignment have been duly authorized, executed and delivered by the Manufacturer and (assuming due authorization, execution and delivery of

cuted and delivered by the respective parties thereto and is a valid and binding instrument enforceable in accordance with its terms, (iii) this Assignment has been duly authorized, executed and delivered by the respective parties hereto and is a valid and binding instrument, (iv) the Assignee is vested with all the rights, titles, interests, powers, privileges and remedies purported to be assigned to it by this Assignment, (v) security title to the units of the Equipment in the Group is validly vested in the Assignee and such units, at the time of delivery thereof to the Company under the Conditional Sale Agreement, were free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Company under the Conditional Sale Agreement and the rights of the Guarantor under the Lease, (vi) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of the Finance Agreement, the Conditional Sale Agreement or this Assignment, or if any approval is necessary it has been obtained, (vii) the Conditional Sale Agreement and this Assignment have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and no other filing or recordation is necessary for the protection of the rights of the Assignee in any state of the United States of America, and (viii) registration of the Conditional Sale Agreement, this Assignment or the certificates of interest delivered pursuant to the Finance Agreement is not required under the Securities Act of 1933, as amended and qualification of an indenture with respect thereto is not required under the Trust Indenture Act of 1939, as amended;

(f) Opinion dated such Closing Date of counsel for the Company, addressed to the Assignee, stating that

security title to the units of the Equipment in the Group and warranting to the Assignee and to the Company that at the time of delivery to the Company under the Conditional Sale Agreement the Manufacturer had legal title to such units and good and lawful right to sell such units and title to such units was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Company under the Conditional Sale Agreement and the rights of the Guarantor under the Lease;

(b) Certificate or Certificates of Acceptance with respect to the units of Equipment in the Group as contemplated by Article 2 of the Conditional Sale Agreement and the Certificate or Certificates of Delivery pursuant to § 1 of the Lease;

(c) Certificate of an officer of the Guarantor to the effect that prior to delivery and acceptance of units of the Equipment under the Conditional Sale Agreement and the Lease, none of the units of the Equipment was placed in the service of the Guarantor or otherwise was used by the Guarantor;

(d) Invoices addressed to the Assignee for the units of the Equipment in the Group accompanied by or having endorsed thereon a certification by the Company and the Guarantor as to the correctness of the prices of such units as set forth in said invoices;

(e) Opinion dated such Closing Date of Messrs. Cravath, Swaine & Moore, who are acting as special counsel for the Assignee, addressed to the Assignee and the Investor under the Finance Agreement, stating that (i) the Finance Agreement has been duly authorized, executed and delivered by the Guarantor and is a valid instrument binding on the Guarantor, (ii) the Conditional Sale Agreement has been duly authorized, exe-

lien, security interest or other encumbrance on any units of the Equipment in respect of which the Assignee pays to the Manufacturer the amount to be paid under Section 5 hereof.

SECTION 3. The Manufacturer will cause to be plainly, distinctly, permanently and conspicuously marked on each side of each unit of the Equipment, at the time of delivery thereof to the Company, in letters not less than one inch in height, the following legend:

"BANKERS TRUST COMPANY,
NEW YORK, NEW YORK, AGENT-OWNER".

SECTION 4. Upon request of the Assignee, its successors and assigns, the Manufacturer will execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of the Manufacturer therein or in the Equipment.

SECTION 5. The Assignee, on each Closing Date fixed as provided in Article 3 of the Conditional Sale Agreement with respect to a Group (as defined in said Article 3) of the Equipment, shall pay to the Manufacturer an amount equal to that portion of the Purchase Price (as defined in said Article 3) of such Group not required to be paid pursuant to subparagraph (a) of the third paragraph of said Article 3, provided that there shall have been delivered to the Assignee (with a signed counterpart to the Company) the following documents, in such number of counterparts or copies as may reasonably be requested, in form and substance satisfactory to it and to its special counsel hereinafter mentioned:

(a) Bill of Sale from the Manufacturer to the Assignee, confirming the transfer to the Assignee of

reason of any defense, setoff or counterclaim whatsoever arising by reason of any other liability at any time of the Manufacturer to the Company or the Guarantor. The Assignee will give notice to the Manufacturer of any suit or proceeding by the Assignee herein described, and will move or take other appropriate action, on the basis of Article 16 of the Conditional Sale Agreement, to strike any defense, setoff or counterclaim asserted by the Company or the Guarantor therein, and if the court or other body having jurisdiction in such suit or proceeding denies such motion or other action and accepts such defense, setoff or counterclaim as a triable issue in such suit or proceeding, the Assignee will notify the Manufacturer thereof and the Manufacturer will thereafter be given the right by the Assignee, at the Manufacturer's expense, to settle or defend such defense, setoff or counterclaim.

Except as set forth in any Additional Agreements set forth in Annex A to the Conditional Sale Agreement and except in cases of designs, processes or combinations specified by the Guarantor and not developed or purported to be developed by the Manufacturer, and articles and materials specified by the Guarantor and not manufactured by the Manufacturer, the Manufacturer agrees to indemnify, protect and hold harmless the Assignee from, and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use of any design, process, combination, article or material infringing or claimed to infringe on any patent or other right in or about the construction or operation of the Equipment, or any unit thereof.

The Manufacturer agrees that any amount payable to it by the Company or the Guarantor, whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to the Assignee, shall not be secured by any claim,

§ 19. *Severability; Effect and Modification of Lease.* Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the Units and supersedes all other agreements, oral or written, with respect to the Units. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Lessor and the Lessee.

§ 20. *Execution.* This Lease may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument. Although this Lease is dated as of May 1, 1970, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

§ 21. *Law Governing.* The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of New York; *provided, however*, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by

duly authorized officers, and their respective corporate seals
to be hereunto affixed and duly attested, all as of the date
first above written.

VINEYARD CAR CORPORATION,

by
President

[CORPORATE SEAL]

Attest:

.....
Secretary

THE KANSAS CITY SOUTHERN RAILWAY
COMPANY,

by
Executive Vice President

[CORPORATE SEAL]

Attest:

.....
Assistant Secretary

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

On this day of May, 1970, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is the President of VINEYARD CAR CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

.....

[NOTARIAL SEAL]

STATE OF MISSOURI }
COUNTY OF JACKSON } ss.:

On this day of May, 1970, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is an Executive Vice President of THE KANSAS CITY SOUTHERN RAILWAY COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

.....

Notary Public

[NOTARIAL STAMP]

My commission expires

SCHEDULE A

Type	Quantity	Lessee's Road Numbers	Unit Base Price	Total Base Price	Time and Place of Delivery
3000 H.P. Model SD-40 Diesel Locomotive	1	626	\$299,500	\$ 299,500	Prior to June 30, 1970 at Bloomburg, Texas
3000 H.P. Model SD-40 Diesel Locomotive	1	627	\$298,500	\$ 298,500	Prior to June 30, 1970 at Bloomburg, Texas
3000 H.P. Model SD-40 Diesel Locomotive	4	622-625 (inclusive)	\$269,250	\$1,077,000	Prior to June 30, 1970 at Bloomburg, Texas
Stainless Steel Caboose	2	343 and 344	\$ 35,767	\$ 71,534	Prior to June 30, 1970 at Kansas City, Kansas
150-Ton, Unit Train Gondolas	75	KCS 404004, KCS 404012, KCS 404021, KCS 404039, KCS 404047, KCS 404055, KCS 404063, KCS 404071, KCS 404080, KCS 404098, KCS 404101, KCS 404110, KCS 404128, KCS 404136, KCS 404144, KCS 404152, KCS 404161, KCS 404179, KCS 404187, KCS 404195, KCS 404209, KCS 404217, KCS 404225, KCS 404233, KCS 404241, KCS 404250, KCS 404268, KCS 404276, KCS 404284, KCS 404292, --KCS 404306, KCS 404314, KCS 404322, KCS 404331, KCS 404349, KCS 404357, KCS 404365, KCS 404373, KCS 404381, KCS 404390, KCS 404403, KCS 404411, KCS 404420, KCS 404438, KCS 404446, KCS 404454, KCS 404462, KCS 404471, KCS 404489, KCS 404497, KCS 404501, KCS 404519, KCS 404527, KCS 404535, KCS 404543, KCS 404551, KCS 404560, KCS 404578, KCS 404586, KCS 404594, KCS 404608, KCS 404616, KCS 404624, KCS 404632, KCS 404641, KCS 404659, KCS 404667, KCS 404675, KCS 404683, KCS 404691, KCS 404705, KCS 404713, KCS 404721, KCS 404730, KCS 404748	\$ 29,168.34	\$2,187,625.50	Prior to August 31, 1970 at Bloomburg, Texas

AGREEMENT AND ASSIGNMENT

Dated as of May 1, 1970

between

**GENERAL MOTORS CORPORATION
(Electro-Motive Division)**

and

**BANKERS TRUST COMPANY,
*as Agent***

AGREEMENT AND ASSIGNMENT dated as of May 1, 1970, between the corporation first named following the testimonium below (hereinafter called the Manufacturer) and BANKERS TRUST COMPANY, with offices at One Battery Park Plaza, New York, New York 10015, acting as Agent under an Agreement dated as of May 1, 1970 (hereinafter called the Finance Agreement), said Trust Company, so acting, being hereinafter called the Assignee.

WHEREAS, the Manufacturer, VINEYARD CAR CORPORATION (hereinafter called the Company), and THE KANSAS CITY SOUTHERN RAILWAY COMPANY (hereinafter called the Guarantor) have entered into a Conditional Sale Agreement dated as of May 1, 1970 (hereinafter called the Conditional Sale Agreement), covering the construction, sale and delivery, on the conditions therein set forth, by the Manufacturer and the purchase by the Company of the railroad equipment described in Annex B to the Conditional Sale Agreement (said equipment being hereinafter called the Equipment);

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (hereinafter called this Assignment) WITNESSETH: That, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration paid by the Assignee to the Manufacturer, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained:

SECTION 1. The Manufacturer hereby assigns, transfers, and sets over unto the Assignee, its successors and assigns:

(a) All the right, title and interest of the Manufacturer in and to each unit of the Equipment when and as delivered to and accepted by the Company;

(b) All the right, title and interest of the Manufacturer in and to the Conditional Sale Agreement (except the right to construct and deliver the Equipment and the right to receive the payments specified in the third paragraph of Article 2 thereof, in the first paragraph and in subparagraph (a) of the third paragraph of Article 3 thereof, in the last paragraph of Article 16 thereof and reimbursement for taxes paid or incurred by the Manufacturer), and, except as aforesaid, in and to any and all amounts which may be or become due or owing to the Manufacturer under the Conditional Sale Agreement on account of the indebtedness in respect of the Purchase Price (as defined in the Conditional Sale Agreement) of the Equipment and interest thereon, and in and to any other sums becoming due from the Company or the Guarantor under the Conditional Sale Agreement, other than those hereinabove excluded; and

(c) Except as limited by subparagraph (b) of this paragraph, all the Manufacturer's rights, titles, powers, privileges and remedies under the Conditional Sale Agreement;

without any recourse, however, against the Manufacturer for or on account of the failure of the Company or the Guarantor to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement; *provided, however*, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the obligations of the Manufacturer to construct and deliver the Equipment in accordance with the Conditional Sale Agreement or with respect to its warranties and agreements contained in Articles 14 and 15 (as modified by any Additional Agreement relating to such Article 15 set forth in Annex A to the Conditional Sale Agreement) of, or in Item 3 of Annex A to,

The Lessee agrees that during the term of this Lease, it will not assign any Unit to service involving the regular operation and maintenance thereof outside the United States of America.

§ 12. *Purchase and Renewal Options.* Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may:

(i) with respect to Units which are locomotives, by written notice delivered to the Lessor not less than six months prior to the end of the term of this Lease in respect of such Units, elect to purchase all, but not fewer than all, such Units covered by this Lease at the end of such term of this Lease for a purchase price equal to the "Fair Market Value" of such Units as of the end of such term; and

(ii) with respect to Units which are not locomotives, by written notice delivered to the Lessor not less than six months prior to the end of the original term of this Lease or any extended term hereof, as the case may be, elect (a) to extend the term of this Lease in respect of all, but not fewer than all, of such Units then covered by this Lease, for additional five-year periods commencing on the scheduled expiration of the original term or extended term of this Lease, as the case may be, provided that no such extended term shall extend beyond December 15, 2000, at a rental payable in 10 semiannual payments, each in an amount equal to the following percentages of the Purchase Price of such Unit: during the first five-year period, 2.7785%; during the second five-year period, 1.8520%; and during the final five-year period, 1.3895%; such semiannual payments to be made on the business day next preceding December 15 and June 15 in each year of the applicable extended term

STATE OF ILLINOIS }
COUNTY OF COOK } ss.:

On this 2nd day of May, 1970, before me personally appeared **B. B. BROWNELL**, to me personally known, who, being by me duly sworn, says that he is a Vice President of GENERAL MOTORS CORPORATION (Electro-Motive Division), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

.....
Notary Public

[NOTARIAL SEAL]

My Commission expires OCTOBER 28, 1971

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

On this 2nd day of ^{June} ~~May~~, 1970, before me personally appeared **C. D. BLAKELY**, to me personally known, who, being by me duly sworn, says that he is a Vice President of BANKERS TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

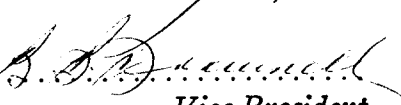
.....
Christine Gerace

[NOTARIAL SEAL]

CHRISTINE GERACE
Notary Public, State of New York
No. 24-1407147
Qualified in Kings County
Certificate filed in New York County
Commission Expires March 30, 1971

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by duly authorized officers, and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

GENERAL MOTORS CORPORATION
(Electro-Motive Division)

by 
Vice President




[CORPORATE SEAL]

Attest:


Assistant Secretary

BANKERS TRUST COMPANY,
as Agent,

by 
Vice President

[CORPORATE SEAL]

Attest:


Assistant Secretary

the Guarantor) it is a valid and existing agreement binding upon the Manufacturer; and

(b) covenants and agrees that it will from time to time and at all times, at the request of the Assignee or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary or appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended to be.

SECTION 8. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of New York; *provided, however*, that the parties shall be entitled to all the rights conferred by Section 20c of the Interstate Commerce Act, such additional rights arising out of the filing, recording or depositing of the Conditional Sale Agreement and this Assignment as shall be conferred by the laws of the several jurisdictions in which the Conditional Sale Agreement or this Assignment shall be filed, recorded or deposited, or in which any unit of the Equipment shall be located, and any rights arising out of the marking on the units of the Equipment.

SECTION 9. This Assignment may be executed in any number of counterparts, but the counterpart delivered to the Assignee shall be deemed to be the original counterpart. Although this Assignment is dated as of May 1, 1970, for convenience only, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

furnished to the Assignee by the Investor named in the Finance Agreement and upon payment by the Company of the amount required to be paid by it pursuant to subparagraph (a) of the third paragraph of Article 3 of the Conditional Sale Agreement.

The Assignee shall not be obligated to make any of the above-mentioned payments at any time while an event of default, or any event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement will constitute an event of default, shall be subsisting under the Conditional Sale Agreement.

In the event that the Assignee shall not make any payment to be made by it as herein provided, the Assignee shall reassign to the Manufacturer, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of the Equipment with respect to which such payment has not been made by the Assignee.

SECTION 6. The Assignee may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Company or the Guarantor thereunder. In the event of any such assignment any such subsequent or successive assignee or assignees shall, to the extent of such assignment, and upon giving the written notice required in Article 16 of the Conditional Sale Agreement, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 7. The Manufacturer hereby:

(a) represents and warrants to the Assignee, its successors and assigns, that the Conditional Sale Agreement was duly authorized and lawfully executed and delivered by it for a valid consideration, that (assuming due authorization, execution and delivery by the Company and

the Conditional Sale Agreement by the Company and the Guarantor and of this Assignment by the Assignee) are valid instruments binding upon the Manufacturer and enforceable against the Manufacturer in accordance with their terms; and

(i) Unless payment of the amount payable pursuant to subparagraph (a) of the third paragraph of Article 3 of the Conditional Sale Agreement shall be made by the Assignee with funds furnished to it for that purpose by the Company, a receipt from the Manufacturer for such payment.

In giving the opinions specified in this Section 5, counsel may qualify any opinion to the effect that any agreement is a valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally. In giving the opinions specified in subparagraphs (e), (f) and (g) of the first paragraph of this Section 5, counsel may in fact rely as to the title to the units at the time of delivery to the Company upon the opinion of counsel for the Manufacturer. In giving the opinions specified in subparagraphs (e) and (f) of the first paragraph of this Section 5, Messrs. Cravath, Swaine & Moore and counsel for the Company may in fact rely, as to any matters governed by the law of any jurisdiction other than New York or the United States, on the opinion of counsel for the Manufacturer or the Guarantor as to such matters.

The obligation of the Assignee hereunder to make payment for any group of the Equipment is hereby expressly conditioned upon the prior receipt by the Assignee, pursuant to the Finance Agreement, of all the funds to be

(i) the Company is a duly organized and existing corporation in good standing under the laws of the jurisdiction of its incorporation, and has the power and authority to own its properties and to carry on its business as now conducted, and (ii) the Conditional Sale Agreement and the Lease have been duly authorized, executed and delivered on behalf of the Company and are valid and binding instruments enforceable against the Company in accordance with their terms;

(g) Opinion dated such Closing Date of counsel for the Guarantor, addressed to the Assignee and the Company, to the effect set forth in clauses (i), (v), (vi) and (vii) of subparagraph (e) above and stating that (i) the Guarantor is a duly organized and existing corporation in good standing under the laws of the jurisdiction of its incorporation, and has the power and authority to own its properties and to carry on its business as now conducted, and (ii) the Conditional Sale Agreement and the Lease have been duly authorized, executed and delivered on behalf of the Guarantor and are valid and binding instruments enforceable against the Guarantor in accordance with their terms;

(h) Opinion dated such Closing Date of counsel for the Manufacturer addressed to the Assignee and the Company, to the effect set forth in clauses (iv) and (v) of subparagraph (e) above and stating that (i) the Manufacturer is a duly organized and existing corporation in good standing under the laws of the jurisdiction of its incorporation, and has the power and authority to own its properties and to carry on its business as now conducted, and (ii) the Conditional Sale Agreement and this Assignment have been duly authorized, executed and delivered by the Manufacturer and (assuming due authorization, execution and delivery of

cuted and delivered by the respective parties thereto and is a valid and binding instrument enforceable in accordance with its terms, (iii) this Assignment has been duly authorized, executed and delivered by the respective parties hereto and is a valid and binding instrument, (iv) the Assignee is vested with all the rights, titles, interests, powers, privileges and remedies purported to be assigned to it by this Assignment, (v) security title to the units of the Equipment in the Group is validly vested in the Assignee and such units, at the time of delivery thereof to the Company under the Conditional Sale Agreement, were free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Company under the Conditional Sale Agreement and the rights of the Guarantor under the Lease, (vi) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of the Finance Agreement, the Conditional Sale Agreement or this Assignment, or if any approval is necessary it has been obtained, (vii) the Conditional Sale Agreement and this Assignment have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and no other filing or recordation is necessary for the protection of the rights of the Assignee in any state of the United States of America, and (viii) registration of the Conditional Sale Agreement, this Assignment or the certificates of interest delivered pursuant to the Finance Agreement is not required under the Securities Act of 1933, as amended and qualification of an indenture with respect thereto is not required under the Trust Indenture Act of 1939, as amended;

(f) Opinion dated such Closing Date of counsel for the Company, addressed to the Assignee, stating that

security title to the units of the Equipment in the Group and warranting to the Assignee and to the Company that at the time of delivery to the Company under the Conditional Sale Agreement the Manufacturer had legal title to such units and good and lawful right to sell such units and title to such units was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Company under the Conditional Sale Agreement and the rights of the Guarantor under the Lease;

(b) Certificate or Certificates of Acceptance with respect to the units of Equipment in the Group as contemplated by Article 2 of the Conditional Sale Agreement and the Certificate or Certificates of Delivery pursuant to § 1 of the Lease;

(c) Certificate of an officer of the Guarantor to the effect that prior to delivery and acceptance of units of the Equipment under the Conditional Sale Agreement and the Lease, none of the units of the Equipment was placed in the service of the Guarantor or otherwise was used by the Guarantor;

(d) Invoices addressed to the Assignee for the units of the Equipment in the Group accompanied by or having endorsed thereon a certification by the Company and the Guarantor as to the correctness of the prices of such units as set forth in said invoices;

(e) Opinion dated such Closing Date of Messrs. Cravath, Swaine & Moore, who are acting as special counsel for the Assignee, addressed to the Assignee and the Investor under the Finance Agreement, stating that (i) the Finance Agreement has been duly authorized, executed and delivered by the Guarantor and is a valid instrument binding on the Guarantor, (ii) the Conditional Sale Agreement has been duly authorized, exe-

lien, security interest or other encumbrance on any units of the Equipment in respect of which the Assignee pays to the Manufacturer the amount to be paid under Section 5 hereof.

SECTION 3. The Manufacturer will cause to be plainly, distinctly, permanently and conspicuously marked on each side of each unit of the Equipment, at the time of delivery thereof to the Company, in letters not less than one inch in height, the following legend:

"BANKERS TRUST COMPANY,
NEW YORK, NEW YORK, AGENT-OWNER".

SECTION 4. Upon request of the Assignee, its successors and assigns, the Manufacturer will execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of the Manufacturer therein or in the Equipment.

SECTION 5. The Assignee, on each Closing Date fixed as provided in Article 3 of the Conditional Sale Agreement with respect to a Group (as defined in said Article 3) of the Equipment, shall pay to the Manufacturer an amount equal to that portion of the Purchase Price (as defined in said Article 3) of such Group not required to be paid pursuant to subparagraph (a) of the third paragraph of said Article 3, provided that there shall have been delivered to the Assignee (with a signed counterpart to the Company) the following documents, in such number of counterparts or copies as may reasonably be requested, in form and substance satisfactory to it and to its special counsel hereinafter mentioned:

(a) Bill of Sale from the Manufacturer to the Assignee, confirming the transfer to the Assignee of

reason of any defense, setoff or counterclaim whatsoever arising by reason of any other liability at any time of the Manufacturer to the Company or the Guarantor. The Assignee will give notice to the Manufacturer of any suit or proceeding by the Assignee herein described, and will move or take other appropriate action, on the basis of Article 16 of the Conditional Sale Agreement, to strike any defense, setoff or counterclaim asserted by the Company or the Guarantor therein, and if the court or other body having jurisdiction in such suit or proceeding denies such motion or other action and accepts such defense, setoff or counterclaim as a triable issue in such suit or proceeding, the Assignee will notify the Manufacturer thereof and the Manufacturer will thereafter be given the right by the Assignee, at the Manufacturer's expense, to settle or defend such defense, setoff or counterclaim.

Except as set forth in any Additional Agreements set forth in Annex A to the Conditional Sale Agreement and except in cases of designs, processes or combinations specified by the Guarantor and not developed or purported to be developed by the Manufacturer, and articles and materials specified by the Guarantor and not manufactured by the Manufacturer, the Manufacturer agrees to indemnify, protect and hold harmless the Assignee from, and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use of any design, process, combination, article or material infringing or claimed to infringe on any patent or other right in or about the construction or operation of the Equipment, or any unit thereof.

The Manufacturer agrees that any amount payable to it by the Company or the Guarantor, whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to the Assignee, shall not be secured by any claim,

§ 19. *Severability; Effect and Modification of Lease.* Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the Units and supersedes all other agreements, oral or written, with respect to the Units. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Lessor and the Lessee.

§ 20. *Execution.* This Lease may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument. Although this Lease is dated as of May 1, 1970, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

§ 21. *Law Governing.* The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of New York; *provided, however*, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by

duly authorized officers, and their respective corporate seals
to be hereunto affixed and duly attested, all as of the date
first above written.

VINEYARD CAR CORPORATION,

by
President

[CORPORATE SEAL]

Attest:

.....
Secretary

THE KANSAS CITY SOUTHERN RAILWAY
COMPANY,

by
Executive Vice President

[CORPORATE SEAL]

Attest:

.....
Assistant Secretary

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

On this day of May, 1970, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is the President of VINEYARD CAR CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

.....

[NOTARIAL SEAL]

STATE OF MISSOURI }
COUNTY OF JACKSON } ss.:

On this day of May, 1970, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is an Executive Vice President of THE KANSAS CITY SOUTHERN RAILWAY COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

.....

Notary Public

[NOTARIAL STAMP]

My commission expires

SCHEDULE A

Type	Quantity	Lessee's Road Numbers	Unit Base Price	Total Base Price	Time and Place of Delivery
3000 H.P. Model SD-40 Diesel Locomotive	1	626	\$299,500	\$ 299,500	Prior to June 30, 1970 at Bloomburg, Texas
3000 H.P. Model SD-40 Diesel Locomotive	1	627	\$298,500	\$ 298,500	Prior to June 30, 1970 at Bloomburg, Texas
3000 H.P. Model SD-40 Diesel Locomotive	4	622-625 (inclusive)	\$269,250	\$1,077,000	Prior to June 30, 1970 at Bloomburg, Texas
Stainless Steel Caboose	2	343 and 344	\$ 35,767	\$ 71,534	Prior to June 30, 1970 at Kansas City, Kansas
150-Ton, Unit Train Gondolas	75	KCS 404004, KCS 404012, KCS 404021, KCS 404039, KCS 404047, KCS 404055, KCS 404063, KCS 404071, KCS 404080, KCS 404098, KCS 404101, KCS 404110, KCS 404128, KCS 404136, KCS 404144, KCS 404152, KCS 404161, KCS 404179, KCS 404187, KCS 404195, KCS 404209, KCS 404217, KCS 404225, KCS 404233, KCS 404241, KCS 404250, KCS 404268, KCS 404276, KCS 404284, KCS 404292, --KCS 404306, KCS 404314, KCS 404322, KCS 404331, KCS 404349, KCS 404357, KCS 404365, KCS 404373, KCS 404381, KCS 404390, KCS 404403, KCS 404411, KCS 404420, KCS 404438, KCS 404446, KCS 404454, KCS 404462, KCS 404471, KCS 404489, KCS 404497, KCS 404501, KCS 404519, KCS 404527, KCS 404535, KCS 404543, KCS 404551, KCS 404560, KCS 404578, KCS 404586, KCS 404594, KCS 404608, KCS 404616, KCS 404624, KCS 404632, KCS 404641, KCS 404659, KCS 404667, KCS 404675, KCS 404683, KCS 404691, KCS 404705, KCS 404713, KCS 404721, KCS 404730, KCS 404748	\$ 29,168.34	\$2,187,625.50	Prior to August 31, 1970 at Bloomburg, Texas

AGREEMENT AND ASSIGNMENT

Dated as of May 1, 1970

between

**GENERAL MOTORS CORPORATION
(Electro-Motive Division)**

and

**BANKERS TRUST COMPANY,
*as Agent***

AGREEMENT AND ASSIGNMENT dated as of May 1, 1970, between the corporation first named following the testimonium below (hereinafter called the Manufacturer) and BANKERS TRUST COMPANY, with offices at One Battery Park Plaza, New York, New York 10015, acting as Agent under an Agreement dated as of May 1, 1970 (hereinafter called the Finance Agreement), said Trust Company, so acting, being hereinafter called the Assignee.

WHEREAS, the Manufacturer, VINEYARD CAR CORPORATION (hereinafter called the Company), and THE KANSAS CITY SOUTHERN RAILWAY COMPANY (hereinafter called the Guarantor) have entered into a Conditional Sale Agreement dated as of May 1, 1970 (hereinafter called the Conditional Sale Agreement), covering the construction, sale and delivery, on the conditions therein set forth, by the Manufacturer and the purchase by the Company of the railroad equipment described in Annex B to the Conditional Sale Agreement (said equipment being hereinafter called the Equipment);

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (hereinafter called this Assignment) WITNESSETH: That, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration paid by the Assignee to the Manufacturer, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained:

SECTION 1. The Manufacturer hereby assigns, transfers, and sets over unto the Assignee, its successors and assigns:

(a) All the right, title and interest of the Manufacturer in and to each unit of the Equipment when and as delivered to and accepted by the Company;

(b) All the right, title and interest of the Manufacturer in and to the Conditional Sale Agreement (except the right to construct and deliver the Equipment and the right to receive the payments specified in the third paragraph of Article 2 thereof, in the first paragraph and in subparagraph (a) of the third paragraph of Article 3 thereof, in the last paragraph of Article 16 thereof and reimbursement for taxes paid or incurred by the Manufacturer), and, except as aforesaid, in and to any and all amounts which may be or become due or owing to the Manufacturer under the Conditional Sale Agreement on account of the indebtedness in respect of the Purchase Price (as defined in the Conditional Sale Agreement) of the Equipment and interest thereon, and in and to any other sums becoming due from the Company or the Guarantor under the Conditional Sale Agreement, other than those hereinabove excluded; and

(c) Except as limited by subparagraph (b) of this paragraph, all the Manufacturer's rights, titles, powers, privileges and remedies under the Conditional Sale Agreement;

without any recourse, however, against the Manufacturer for or on account of the failure of the Company or the Guarantor to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement; *provided, however*, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the obligations of the Manufacturer to construct and deliver the Equipment in accordance with the Conditional Sale Agreement or with respect to its warranties and agreements contained in Articles 14 and 15 (as modified by any Additional Agreement relating to such Article 15 set forth in Annex A to the Conditional Sale Agreement) of, or in Item 3 of Annex A to,

the Conditional Sale Agreement or relieve the Company or the Guarantor from their respective obligations to the Manufacturer contained or referred to in Articles 1, 2, 3, 6, 10, 14, and 15 or Annex A of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 16 of the Conditional Sale Agreement, all obligations of the Manufacturer to the Company with respect to the Equipment shall be and remain enforceable by the Company, its successors and assigns, against and only against the Manufacturer. In furtherance of the foregoing assignment and transfer, the Manufacturer hereby authorizes and empowers the Assignee in the Assignee's own name, or in the name of the Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for the Manufacturer, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled to under this Assignment and compliance by the Company and the Guarantor with the terms and agreements on their parts to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. The Manufacturer covenants and agrees that it will construct and deliver the Equipment to the Company in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Assignment, it will perform and fully comply with each and all of the covenants and conditions of the Conditional Sale Agreement to be performed and complied with by the Manufacturer. The Manufacturer further covenants and agrees with, and warrants to, the Assignee and the Company that at the time of delivery of each unit of the Equipment to the Company under the Conditional Sale Agreement it will have legal title to such unit and good and lawful right to

sell such unit, free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Company under the Conditional Sale Agreement and the rights of the Guarantor under the Lease (as defined in the Conditional Sale Agreement), and that the obligation of the Company to pay the Purchase Price of such unit and interest thereon in accordance with the terms of the Conditional Sale Agreement will not be subject to any defense, setoff or counterclaim whatsoever; and the Manufacturer further covenants and agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to said delivery of such unit by the Manufacturer to the Company; all *subject, however*, to the provisions of the Conditional Sale Agreement and the rights of the Company thereunder. The Manufacturer will not deliver any of the Equipment to the Company under the Conditional Sale Agreement until the Conditional Sale Agreement and the Lease have been filed pursuant to Section 20c of the Interstate Commerce Act.

The Manufacturer agrees that in any suit or proceeding brought by the Assignee to collect any instalment of the indebtedness in respect of the Purchase Price of the Equipment, or interest thereon or any other payment due under the Conditional Sale Agreement, or to enforce any provision of the Conditional Sale Agreement, the Manufacturer will indemnify and hold harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, setoff or counterclaim whatsoever of the Company or the Guarantor arising out of the breach by the Manufacturer of any obligation with respect to the Equipment or the construction, delivery or warranty thereof, or under Articles 14 and 15 (as modified by any Additional Agreement relating to such Article 15 set forth in Annex A to the Conditional Sale Agreement) of, or in Item 3 of Annex A to, the Conditional Sale Agreement, or by

STATE OF ILLINOIS }
COUNTY OF COOK } ss.:

On this 2nd day of May, 1970, before me personally appeared **B. B. BROWNELL**, to me personally known, who, being by me duly sworn, says that he is a Vice President of GENERAL MOTORS CORPORATION (Electro-Motive Division), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

.....
Notary Public

[NOTARIAL SEAL]

My Commission expires OCTOBER 28, 1971

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

On this 2nd day of ^{June} May, 1970, before me personally appeared **C. D. BLAKELY**, to me personally known, who, being by me duly sworn, says that he is a Vice President of BANKERS TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

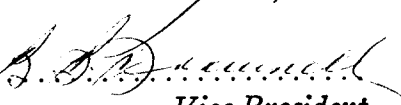
.....
Christine Gerace

[NOTARIAL SEAL]

CHRISTINE GERACE
Notary Public, State of New York
No. 24-1407147
Qualified in Kings County
Certificate filed in New York County
Commission Expires March 30, 1971

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by duly authorized officers, and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

GENERAL MOTORS CORPORATION
(Electro-Motive Division)

by 
Vice President




[CORPORATE SEAL]

Attest:


Assistant Secretary

BANKERS TRUST COMPANY,
as Agent,

by 
Vice President

[CORPORATE SEAL]

Attest:


Assistant Secretary

the Guarantor) it is a valid and existing agreement binding upon the Manufacturer; and

(b) covenants and agrees that it will from time to time and at all times, at the request of the Assignee or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary or appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended to be.

SECTION 8. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of New York; *provided, however*, that the parties shall be entitled to all the rights conferred by Section 20c of the Interstate Commerce Act, such additional rights arising out of the filing, recording or depositing of the Conditional Sale Agreement and this Assignment as shall be conferred by the laws of the several jurisdictions in which the Conditional Sale Agreement or this Assignment shall be filed, recorded or deposited, or in which any unit of the Equipment shall be located, and any rights arising out of the marking on the units of the Equipment.

SECTION 9. This Assignment may be executed in any number of counterparts, but the counterpart delivered to the Assignee shall be deemed to be the original counterpart. Although this Assignment is dated as of May 1, 1970, for convenience only, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

furnished to the Assignee by the Investor named in the Finance Agreement and upon payment by the Company of the amount required to be paid by it pursuant to subparagraph (a) of the third paragraph of Article 3 of the Conditional Sale Agreement.

The Assignee shall not be obligated to make any of the above-mentioned payments at any time while an event of default, or any event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement will constitute an event of default, shall be subsisting under the Conditional Sale Agreement.

In the event that the Assignee shall not make any payment to be made by it as herein provided, the Assignee shall reassign to the Manufacturer, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of the Equipment with respect to which such payment has not been made by the Assignee.

SECTION 6. The Assignee may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Company or the Guarantor thereunder. In the event of any such assignment any such subsequent or successive assignee or assignees shall, to the extent of such assignment, and upon giving the written notice required in Article 16 of the Conditional Sale Agreement, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 7. The Manufacturer hereby:

(a) represents and warrants to the Assignee, its successors and assigns, that the Conditional Sale Agreement was duly authorized and lawfully executed and delivered by it for a valid consideration, that (assuming due authorization, execution and delivery by the Company and

the Conditional Sale Agreement by the Company and the Guarantor and of this Assignment by the Assignee) are valid instruments binding upon the Manufacturer and enforceable against the Manufacturer in accordance with their terms; and

(i) Unless payment of the amount payable pursuant to subparagraph (a) of the third paragraph of Article 3 of the Conditional Sale Agreement shall be made by the Assignee with funds furnished to it for that purpose by the Company, a receipt from the Manufacturer for such payment.

In giving the opinions specified in this Section 5, counsel may qualify any opinion to the effect that any agreement is a valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally. In giving the opinions specified in subparagraphs (e), (f) and (g) of the first paragraph of this Section 5, counsel may in fact rely as to the title to the units at the time of delivery to the Company upon the opinion of counsel for the Manufacturer. In giving the opinions specified in subparagraphs (e) and (f) of the first paragraph of this Section 5, Messrs. Cravath, Swaine & Moore and counsel for the Company may in fact rely, as to any matters governed by the law of any jurisdiction other than New York or the United States, on the opinion of counsel for the Manufacturer or the Guarantor as to such matters.

The obligation of the Assignee hereunder to make payment for any group of the Equipment is hereby expressly conditioned upon the prior receipt by the Assignee, pursuant to the Finance Agreement, of all the funds to be

(i) the Company is a duly organized and existing corporation in good standing under the laws of the jurisdiction of its incorporation, and has the power and authority to own its properties and to carry on its business as now conducted, and (ii) the Conditional Sale Agreement and the Lease have been duly authorized, executed and delivered on behalf of the Company and are valid and binding instruments enforceable against the Company in accordance with their terms;

(g) Opinion dated such Closing Date of counsel for the Guarantor, addressed to the Assignee and the Company, to the effect set forth in clauses (i), (v), (vi) and (vii) of subparagraph (e) above and stating that (i) the Guarantor is a duly organized and existing corporation in good standing under the laws of the jurisdiction of its incorporation, and has the power and authority to own its properties and to carry on its business as now conducted, and (ii) the Conditional Sale Agreement and the Lease have been duly authorized, executed and delivered on behalf of the Guarantor and are valid and binding instruments enforceable against the Guarantor in accordance with their terms;

(h) Opinion dated such Closing Date of counsel for the Manufacturer addressed to the Assignee and the Company, to the effect set forth in clauses (iv) and (v) of subparagraph (e) above and stating that (i) the Manufacturer is a duly organized and existing corporation in good standing under the laws of the jurisdiction of its incorporation, and has the power and authority to own its properties and to carry on its business as now conducted, and (ii) the Conditional Sale Agreement and this Assignment have been duly authorized, executed and delivered by the Manufacturer and (assuming due authorization, execution and delivery of

cuted and delivered by the respective parties thereto and is a valid and binding instrument enforceable in accordance with its terms, (iii) this Assignment has been duly authorized, executed and delivered by the respective parties hereto and is a valid and binding instrument, (iv) the Assignee is vested with all the rights, titles, interests, powers, privileges and remedies purported to be assigned to it by this Assignment, (v) security title to the units of the Equipment in the Group is validly vested in the Assignee and such units, at the time of delivery thereof to the Company under the Conditional Sale Agreement, were free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Company under the Conditional Sale Agreement and the rights of the Guarantor under the Lease, (vi) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of the Finance Agreement, the Conditional Sale Agreement or this Assignment, or if any approval is necessary it has been obtained, (vii) the Conditional Sale Agreement and this Assignment have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and no other filing or recordation is necessary for the protection of the rights of the Assignee in any state of the United States of America, and (viii) registration of the Conditional Sale Agreement, this Assignment or the certificates of interest delivered pursuant to the Finance Agreement is not required under the Securities Act of 1933, as amended and qualification of an indenture with respect thereto is not required under the Trust Indenture Act of 1939, as amended;

(f) Opinion dated such Closing Date of counsel for the Company, addressed to the Assignee, stating that

security title to the units of the Equipment in the Group and warranting to the Assignee and to the Company that at the time of delivery to the Company under the Conditional Sale Agreement the Manufacturer had legal title to such units and good and lawful right to sell such units and title to such units was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Company under the Conditional Sale Agreement and the rights of the Guarantor under the Lease;

(b) Certificate or Certificates of Acceptance with respect to the units of Equipment in the Group as contemplated by Article 2 of the Conditional Sale Agreement and the Certificate or Certificates of Delivery pursuant to § 1 of the Lease;

(c) Certificate of an officer of the Guarantor to the effect that prior to delivery and acceptance of units of the Equipment under the Conditional Sale Agreement and the Lease, none of the units of the Equipment was placed in the service of the Guarantor or otherwise was used by the Guarantor;

(d) Invoices addressed to the Assignee for the units of the Equipment in the Group accompanied by or having endorsed thereon a certification by the Company and the Guarantor as to the correctness of the prices of such units as set forth in said invoices;

(e) Opinion dated such Closing Date of Messrs. Cravath, Swaine & Moore, who are acting as special counsel for the Assignee, addressed to the Assignee and the Investor under the Finance Agreement, stating that (i) the Finance Agreement has been duly authorized, executed and delivered by the Guarantor and is a valid instrument binding on the Guarantor, (ii) the Conditional Sale Agreement has been duly authorized, exe-

lien, security interest or other encumbrance on any units of the Equipment in respect of which the Assignee pays to the Manufacturer the amount to be paid under Section 5 hereof.

SECTION 3. The Manufacturer will cause to be plainly, distinctly, permanently and conspicuously marked on each side of each unit of the Equipment, at the time of delivery thereof to the Company, in letters not less than one inch in height, the following legend:

"BANKERS TRUST COMPANY,
NEW YORK, NEW YORK, AGENT-OWNER".

SECTION 4. Upon request of the Assignee, its successors and assigns, the Manufacturer will execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of the Manufacturer therein or in the Equipment.

SECTION 5. The Assignee, on each Closing Date fixed as provided in Article 3 of the Conditional Sale Agreement with respect to a Group (as defined in said Article 3) of the Equipment, shall pay to the Manufacturer an amount equal to that portion of the Purchase Price (as defined in said Article 3) of such Group not required to be paid pursuant to subparagraph (a) of the third paragraph of said Article 3, provided that there shall have been delivered to the Assignee (with a signed counterpart to the Company) the following documents, in such number of counterparts or copies as may reasonably be requested, in form and substance satisfactory to it and to its special counsel hereinafter mentioned:

(a) Bill of Sale from the Manufacturer to the Assignee, confirming the transfer to the Assignee of

reason of any defense, setoff or counterclaim whatsoever arising by reason of any other liability at any time of the Manufacturer to the Company or the Guarantor. The Assignee will give notice to the Manufacturer of any suit or proceeding by the Assignee herein described, and will move or take other appropriate action, on the basis of Article 16 of the Conditional Sale Agreement, to strike any defense, setoff or counterclaim asserted by the Company or the Guarantor therein, and if the court or other body having jurisdiction in such suit or proceeding denies such motion or other action and accepts such defense, setoff or counterclaim as a triable issue in such suit or proceeding, the Assignee will notify the Manufacturer thereof and the Manufacturer will thereafter be given the right by the Assignee, at the Manufacturer's expense, to settle or defend such defense, setoff or counterclaim.

Except as set forth in any Additional Agreements set forth in Annex A to the Conditional Sale Agreement and except in cases of designs, processes or combinations specified by the Guarantor and not developed or purported to be developed by the Manufacturer, and articles and materials specified by the Guarantor and not manufactured by the Manufacturer, the Manufacturer agrees to indemnify, protect and hold harmless the Assignee from, and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use of any design, process, combination, article or material infringing or claimed to infringe on any patent or other right in or about the construction or operation of the Equipment, or any unit thereof.

The Manufacturer agrees that any amount payable to it by the Company or the Guarantor, whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to the Assignee, shall not be secured by any claim,

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Receipt of a copy of, and due notice of the assignment made by, the foregoing Agreement and Assignment is hereby acknowledged as of May 1, 1970.

VINEYARD CAR CORPORATION,

by *Mr. D. L. ...*
President

THE KANSAS CITY SOUTHERN
RAILWAY COMPANY,

by *L. O. Smith*
Executive Vice
President